McClatchy Newspapers, Publisher of the Modesto Bee *and* Northern California Newspaper Guild, Local No. 52, The Newspaper Guild, AFL–CIO, CLC. Case 32–CA–11228

December 31, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

On June 26, 1991, Administrative Law Judge William J. Pannier III issued the attached decision. The Respondent filed exceptions and a supporting brief.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions, briefs, and statements of position, and has decided to affirm the judge's rulings, findings, and conclusions consistent with our discussion below, and to adopt the recommended Order as modified and set out in full below.

As in *McClatchy Newspapers*, 321 NLRB 1386 (1996) ("*McClatchy II*"), the primary issue in this case is whether the Respondent violated Section 8(a)(5) and (1) and Section 8(d) by unilaterally changing wages of unit employees after having bargained to impasse on its proposal to institute a discretionary merit pay plan.

The parties stipulated to the relevant facts, which are fully detailed in the judge's decision. In short, after the contractual parties bargained unsuccessfully for 3 years for a successor collective-bargaining agreement, the Respondent unilaterally implemented its final negotiating offer on May 21, 1990. There is no dispute that the parties' bargaining had been in good faith and that a lawful impasse had been reached before implementation. The final offer provided, inter alia, for salary increases based on merit; they were to be determined at the Respondent's sole discretion, based on its annual evaluation of job performance. Pursuant to these terms, the Respondent granted merit increases to 77 unit employees between May 21, 1990, and the time of the unfair labor practice hearing. Consistent with the implemented provisions, the Union's role in the merit increase procedure was limited to those situations in which a unit employee chose to appeal a merit increase determination and further chose to request representation by the Union in the appeal process.

The judge concluded that, notwithstanding the fact that the Respondent bargained its discretionary merit increase proposal to a lawful impasse, its unilateral granting of merit wage increases to unit employees, without bargaining with the Union concerning the timing and amounts of the increases, violated Section 8(a)(5) and (1). The Respondent filed exceptions to the judge's decision with the Board. While this case was pending before the Board, the U.S. Court of Appeals for the Tenth Circuit denied enforcement of the Board's decision in *Colorado Ute*, 295 NLRB 607 (1989),[2] and the D.C. Circuit remanded *McClatchy Newspapers*, 299 NLRB 1045 (1990) ("*McClatchy I*"), to the Board for further consideration.[3] The judge in the instant case had relied in significant part on both of these Board decisions in reaching his conclusion above.

In *McClatchy II*, the Board responded to the D.C. Circuit's instructions on remand by providing a new analysis in support of the finding that the respondent violated Section 8(a)(5) and (1) by unilaterally implementing its merit increase wage proposal following a lawful bargaining impasse. The Board reasoned as follows:

> In brief, we find that preservation of the integrity of the collective-bargaining process requires that we recognize a narrow exception to the implementation-upon-impasse rules, at least in the case of wage proposals, such as the one at issue here, that confer on an employer broad discretionary powers that necessarily entail recurring unilateral decisions regarding changes in the employees' rates of pay.
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> . . . .
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> Specifically, were we to allow the Respondent to implement without agreement these proposals, such that the employer could thereafter unilaterally exert unlimited managerial discretion over future pay increases, i.e., without explicit standards or criteria, the fundamental concern is whether such application of economic force could reasonably be viewed "as a device to [destroy], rather than [further], the bargaining process." . . . [W]e find that if the Respondent was granted carte blanche authority over wage increases (without limitation as to time, standards, criteria, or the Guild's agreement), it would be so *inherently* destructive of the fundamental principles of collective bargaining that it could not be sanctioned as part of a doctrine created to break impasse and restore active collective bargaining.

[1] By notice dated July 17, 1992, the Board invited the parties to file statements of position concerning the impact on this case, if any, of the court's decision in *NLRB v. McClatchy Newspapers*, 964 F.2d 1153 (D.C. Cir. 1992). Subsequently, the Board also granted permission to the Council of Labor Law Equality (COLLE) to file an amicus brief. All parties and COLLE filed statements of position, the Charging Party and the Respondent filed reply briefs, and the Respondent and COLLE requested oral argument. The requests for oral argument are denied as the record, exceptions, briefs, and statements of position adequately present the issues and positions of the parties.

[2] 939 F.2d 1392 (10th Cir. 1991).

[3] 964 F.2d 1153 (D.C. Cir. 1992).

321 NLRB 1386, 1388, 1390–1391 (fn. citations omitted).

The instant case is controlled by the Board's decision in *McClatchy II*. The Respondent's obligation was to negotiate to agreement or to impasse "definable objective procedures and criteria" governing raises under its merit pay proposal prior to implementation of the proposal. Id. at 1391. As in *McClatchy II*, "no such substantive negotiations ever occurred." Ibid.[4] Consequently, the unilateral implementation of the Respondent's discretionary merit pay plan was inherently destructive of the statutory collective-bargaining process, and an exception to the postimpasse implementation rules is therefore warranted. Accordingly, and as more fully explained in *McClatchy II*, we affirm the judge's conclusion that the Respondent violated Section 8(a)(5) and (1) in view of its failure and refusal to satisfy its obligation to bargain with the Union prior to granting merit wage increases to unit employees. We will modify the judge's recommended Order to set forth an appropriate remedy consistent with the substance of *McClatchy II*.[5]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, McClatchy Newspapers, Publisher of the Modesto Bee, Modesto, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Granting merit wage increases to employees in the following appropriate bargaining unit without having offered to bargain with Northern California Newspaper Guild, Local No. 52, The Newspaper Guild, AFL–CIO, CLC about the procedures and criteria relevant to those increases. The appropriate bargaining unit is:

> All editorial department employees, excluding the executive editor, managing editor, editor of the editorial page, two associate editors, metro editor, two assistant metro editors, executive sports editor, sports editor, news editor, one assistant news editor, features editor, assistant features editor, business editor, weekend editor, graphics editor, chief artist, chief photographer, chief librarian, chief copy clerk and confidential secretary to the executive director.

(b) Expressly or impliedly threatening to discharge or otherwise discipline employees for engaging in activity, such as striking and picketing, protected by Section 7 of the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the representative of the employees in the unit described above about the procedures and criteria relevant to merit wage increases prior to granting merit wage increases to unit employees.

(b) At the Union's request, cancel any merit wage increases granted to unit employees pursuant to its unlawful unilateral conduct in this case.

(c) Within 14 days after service by the Region, post at its Modesto, California place of business copies of the attached notice[6] marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 27, 1990.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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[4] We acknowledge that the Respondent here did propose and bargain to impasse a defined element of its discretionary merit increase proposal—the timing of a wage increase. Thus, the Respondent proposed that a merit increase, if granted, "shall be effective for the first full pay period following completion of the [annual] performance review process." See sec. 5.3 of the Respondent's unilaterally implemented merit pay proposal, set forth at part III,B of the judge's decision. However, we also note the integrated nature of the procedures and criteria relevant to a merit pay proposal such as the Respondent's, and the limited, independent significance of the timing component in the context of the proposal. Thus, the Respondent's negotiation of this substantive element to impasse does not diminish the unfair labor practice committed here. See *Plainville Ready Mix Concrete Co.*, 309 NLRB 581, 588 (1992), enfd. 44 F.3d 1320 (6th Cir. 1995) (postimpasse implementation of portions of an integrated overall health insurance proposal violated Sec. 8(a)(5)).

[5] We shall also modify the judge's Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

[6] See fn. 3 of the judge's decision.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT grant merit wage increases to you prior to offering to bargain with Northern California Newspaper Guild, Local No. 52, The Newspaper Guild, AFL–CIO, CLC, as the representative of editorial department employees, about the procedures and criteria relevant to such increases.

WE WILL NOT expressly or impliedly threaten to discharge or otherwise discipline you for engaging in activity, such as striking and picketing, protected by Section 7 of the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the labor organization named above as the representative of editorial department employees about the procedures and criteria relevant to employee merit wage increases prior to granting such wage increases.

WE WILL, if the labor organization named above requests, cancel merit wage increases granted to employees pursuant to our unlawful unilateral conduct.

MCCLATCHY NEWSPAPERS, PUBLISHER
OF THE MODESTO BEE

Jeffrey L. Henze, for the General Counsel.
Allen W. Teagle and *William F. Terheyden (Littler, Mendelson, Fastiff & Tichy)*, with him on brief, of San Francisco, California, for the Respondent.

DECISION

STATEMENT OF THE CASE

WILLIAM J. PANNIER III, Administrative Law Judge. I heard this case in Atwater, California, on January 23, 1991. On January 9, 1991, the Regional Director for Region 32 of the National Labor Relations Board (the Board), issued an amended complaint and notice of hearing, based upon an unfair labor practices charge filed on June 27, 1990, alleging violations of Section (a)(1) and (5) of the National Labor Relations Act (the Act). All parties have been afforded full opportunity to appear, to introduce evidence, to call and examine witnesses, and to file briefs. Based on the entire record and on the briefs that were filed, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, McClatchy Newspapers, publisher of the Modesto Bee (Respondent), has been a corporation with an office and place of business in Modesto, California, and has engaged in the publication of a daily newspaper. During the 12-month period preceding issuance of the complaint, in the course and conduct of its business operations, Respondent derived gross revenues in excess of $200,000, held membership in or subscribed to various interstate news services, including the Associated Press, published various nationally syndicated features, advertised various nationally sold products, and purchased and received goods or services valued in excess of $5,000 which originated outside the State of California. Therefore, I conclude, as admitted in the answer to complaint, that at all times material, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

At all times material, Northern California Newspaper Guild, No. 52, The Newspaper Guild, AFL–CIO, CLC (the Union), has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Issues*

Since at least 1975 the Union has been, and has been recognized by Respondent as being, the exclusive collective-bargaining representative of employees in an admittedly appropriate unit of all editorial department employees, excluding the executive editor, managing editor, editor of the editorial page, two associate editors, metro director, two assistant metro editors, executive sports editor, sports editor, news editor, one assistant news editor, features editor, assistant features editor, business editor, weekend editor, graphics editor, chief artist, chief photographer, chief librarian, chief copy clerk and confidential secretary to the executive director.[1] The most recent contract between the parties expired on April 30, 1987. Negotiations for agreement on the terms for a successive contract reached impasse by May 2, 1990. There is no contention that either those negotiations or the resultant impasse were other than in good faith.

On May 21, 1990, Respondent posted at its Modesto facility the provisions of its final offer in a multipage document entitled "Terms and Conditions of Employment." In a cov-

[1] The inclusion/exclusion of two additional positions—assistant sports editor and a second assistant news editor—remains in dispute. However, the parties stipulated that for purposes of this proceeding that dispute is not material or dispositive and that this Decision would not resolve their inclusion in or exclusion from the unit.

ering memorandum, the employees were notified, inter alia, by Respondent:

> Since we have been unable to reach agreement with the [Union] on terms of a new contract and are at impasse in negotiations, the terms and conditions of the prior contract have been cancelled and the Publisher is posting terms and conditions of employment based on its final offer.

Typed at the bottom of the covering page for the Terms and Conditions of Employment is the legend:

> SINCE THERE IS NOT A CURRENT AGREEMENT BETWEEN THE PUBLISHER AND THE NEWSPAPER GUILD ON TERMS OF A NEW COLLECTIVE BARGAINING AGREEMENT, THE PUBLISHER RESERVES THE RIGHT NOT TO APPLY ANY PROVISION OF THESE TERMS AND CONDITIONS THAT DEPENDS UPON THE EXISTENCE OF A BINDING CONTRACT BETWEEN THE PARTIES FOR ENFORCEABILITY.

There is no contention that Respondent violated the Act by having posted these terms from its final offer. However, it is alleged that implementation of the merit pay provisions violated Section 8(a)(5) and (1) of the Act and, further, that inclusion of a no-strike provision without specific explanation that it is not enforceable without a binding contract violated Section 8(a)(1) of the Act. For the reasons set forth post, I conclude that Respondent did commit violations of Section 8(a)(1) and (5) of the Act.

B. *Implementation of the Merit Pay Proposal*

To the extent pertinent here, subsection 3.8 of the most recent contract provided that:

> Nothing in this Contract shall prevent employees from bargaining individually for salary increases in excess of the minimums established herein. Employees covered under this Contract may be awarded a merit salary increase in excess of the minimums provided herein. At the time of an employee's annual performance review, such merit increases may be given, increased, reduced, or eliminated.

This provision would be replaced by the proposals in Respondent's final offer of May 2, 1990. The merit pay provisions of that offer, as set forth in the subsequently posted Terms and Conditions of Employment, provided:

> 5.1 Employees covered by this Contract shall receive an annual Job Performance Review.
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> (a) [Respondent] shall conduct initial Job Performance Reviews of all employees covered by this Contract who have completed at least one (1) year's service with the Modesto Bee within six (6) months of signing this Contract.
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> (b) The initial Job Performance Reviews shall be conducted by department on the basis of seniority.
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> 5.2 Based upon the annual Job Performance Review, an employee may receive a salary increase. It is understood that some employees may not receive salary increases and that the amount of salary increases, if any, will vary depending on individual employee performance.
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> 5.3 Salary increases, if any, shall be granted and their amounts determined at the sole discretion of [Respondent] based on job performance and shall be effective for the first full pay period following completion of the performance review process. The provisions of this Section 5 shall not be subject to the provisions of Section 9 (Settlement of Disputes) of this Contract.
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> 5.4 Any employee who receives a Job Performance Review may, within one week, appeal the salary increase determination.
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> (a) The employee shall first take his or her appeal of the salary increase determination to the Managing Editor.
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> (b) Should the Managing Editor fail to resolve the issue to the satisfaction of the employee, within one week thereafter the employee may appeal the salary increase determination to the Executive Editor. The decision of the Executive Editor shall be final.
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> (c) Upon the request of the employee, the [Union] may participate with the employee in the appeal process.

After posting the Final Terms and Conditions of Employment, Respondent implemented section 5 consistent with its written terms. As a result, by the time of the hearing 77 employees' performance had been reviewed and merit increases had been awarded to all of them. However, 23 of them were not satisfied with the merit increases received and, under section 5.4(a), they appealed to the managing editor who agreed with 8 of them, retroactively increasing the amounts of the initially granted merit increases. Seven of the other employees appealed to the executive editor, who agreed in one instance to retroactively increase the amount of that employee's initially granted merit increase.

As quoted above, subsection 5.4(c) provided for participation by the Union in the appeals process regarding merit increases. In fact, a representative of the Union participated in nine of the 23 appeals to the managing editor and in four of the seven appeals to the executive editor. Respondent placed no restrictions on the Union's participation, nor on what its representative could say or do, during the appeals meetings with the managing and executive editors. Nevertheless, the Union's role in the merit pay review has been, and will continue to be, limited to situations where an employee chooses to appeal a merit pay determination and, further, chooses to request representation by the Union in making that appeal.

In *Colorado-Ute Electric Assn.*, 295 NLRB 607 (1989), the Board held that even though the respondent had lawfully bargained to impasse on a merit wage increase proposal, it violated Section 8(a)(5) and (1) of the Act by implementing its proposal, because unilateral merit wage increases were granted to employees without first offering to bargain with their bargaining agent concerning the timing and amounts of each increase. "Thus, to the extent that implementation of a merit pay program also involves discretion in determining the amounts or timing of increases, it is a matter for consultation with the bargaining agent." (Citation omitted.) *McClatchy Newspapers*, 299 NLRB 1039, 1040 (1990). Obviously, Respondent does not agree with the result reached

in *Colorado-Ute*. However, it does not contend that the doctrine enunciated in that case applies with less force to its Modesto publication than it applied in connection with the Sacramento Bee. Consequently, regardless of possible reservations concerning the analytical underpinnings or implications of the *Colorado-Ute* doctrine, an administrative law judge is obliged to follow and apply it in appropriate circumstances. Therefore, I conclude that by granting merit increases without prior consultation with the Union concerning their timing and amounts, Respondent violated Section 8(a)(5) and (1) of the Act.

C. *The No-Strike Provision*

Subsection 23.1 of Respondent's final offer and of its Terms and Conditions of Employment provides:

> During the term of this Agreement the [Union] and its agents will not cause, permit, condone, encourage or sanction and no employee or employees of [Respondent] will participate or engage in any strike, slowdown, sick-in, cessation of work, withholding services, work stoppages, picketing, interference with operations of [Respondent] or sale or distribution of its products directed against [Respondent] at any location. Any employee or employees covered by this Agreement engaging in any such activity shall be subject to immediate discharge as said misconduct shall constitute just cause for discharge under this Contract. In the event of a strike by another bargaining unit against [Respondent], the [Union] shall not encourage the honoring of the other union's picket line, and shall advise its members in writing that honoring such picket lines may lead to permanent replacement.

It is undisputed that this provision did not constitute a waiver of employees' statutory right to strike under the facts in this case, because such a provision would become effective only upon full agreement to the terms for a contract or upon waiver by the Union of its right to bargain about its application. Neither alternative has occurred regarding subsection 23.1: no bargaining has occurred since May 21, 1990, and the Union never waived Respondent's employees' right to strike.

The General Counsel alleges that by including subsection 23.1 in the Terms and Conditions of Employment Respondent interfered with the employees' statutory right to strike in violation of Section 8(a)(1) of the Act. In opposing that allegation, Respondent points to several stipulated and undisputed facts: on its face, subsection 23.1 is confined to "During the term of the Agreement," and, as set forth in subsection III,A supra, the covering memorandum to the Terms and Conditions of Employment explained expressly that "we have been unable to reach agreement with the [Union] on terms of a new contract."; the Union has informed the bargaining unit employees, including by posting notices on Respondent's editorial department bulletin board, that they could engage in strikes and picketing against Respondent; picketing by members of the bargaining unit has actually occurred on five or six separate occasions, not in conjunction with a strike or withholding of services by the Union, on and after May 21, 1990; and, at no time has Respondent disciplined or taken any adverse action against any employee who engaged in that picketing.

In support of this allegation, the General Counsel argues primarily that Respondent had an affirmative duty of explaining to its employees that subsection 23.1 could not be enforced absent existence of a binding contract with the Union. Yet, under the Act, an employer is allowed "to inform employees of the status of negotiations, or of proposals previously made to the Union, or of its version of a breakdown in negotiations," *Proctor & Gamble Mfg.*, 160 NLRB 334, 340 (1966), and, by extension, to inform employees of the terms of a last and final offer that are being implemented and put into effect. The General Counsel has cited no authority for the proposition that, in addition, an employer has an affirmative duty to explain to employees the meaning of the terms in a last and final offer, even when those terms are being implemented. Indeed, imposition of such a duty should occur only after analysis of certain policy implications that it might affect. For example, such a duty could run the risk of inviting communication that could lead to direct bargaining with employees and to employer usurpation of bargaining aspects ordinarily allocated to employees' bargaining agents. Similar considerations led an administrative law judge to dismiss an identical affirmative-explanation-duty argument in *McClatchy Newspapers, Inc., Publisher of the Sacramento Bee*, JD(SF)–4–91, slip op. at 14–15 (Jan. 23, 1991).

In the final analysis, however, it is not necessary to resolve that affirmative duty argument in the context of this case, given the facts as presented and the, in effect, alternative arguments advanced by the General Counsel. For, as quoted in subsection III,A, supra, Respondent prefaced its enumeration of implemented terms with a covering page bearing a legend notifying employees that, absent a current contract, Respondent reserved the right not to apply those provisions dependent upon the existence of such a contract. That choice of terminology has two effects. First, such a negative pregnant implies that Respondent possesses authority to implement all of the terms recited in the Terms and Conditions of Employment, even those pertaining to statutory rights whose lawful implementation is contingent upon waiver by the employees' bargaining agent. Yet, that implication is an incorrect one.

Second, the wording of the legend effectively notifies employees of a possibility that Respondent may discharge any of them who engages in the statutorily protected rights enumerated in subsection 23.1. Certainly, it cannot be forcefully argued that, absent a valid waiver, employers are free to directly tell employees that they will be discharged for engaging in such activity as striking and picketing. No less, "to tell employees that such is a *possibility* is not an accurate statement of the law; and such necessarily threatens employees with discharge in the event they exercise their protected right to strike." (Emphasis added.) *R. L. White Co.*, 262 NLRB 575, 584 (1982). That is, by telling employees that it reserves the right not to apply provisions such as subsection 23.1, Respondent unlawfully informed them of a possibility of discharge for engaging in statutorily protected activity.

That conclusion is neither nullified nor mitigated by any other aspect in this case. The presence of unprotected acts—such as a slowdown—among those actions proscribed in subsection 23.1 does not alter the fact that statutorily protected acts are lumped together and given equal status among the actions proscribed by it. If Respondent had sought to confine

its exercise of disciplinary discretion to unprotected activity, it should have prepared and posted more specific and particularized language in its Terms and Conditions of Employment.

Nor can it be said that Respondent's threat of possible discharge is tacitly repudiated by the fact that Respondent took no action against employees who picketed on five or six occasions after May 21, 1990. At best, its failure to discharge them shows only that it chose to exercise its asserted discretion not to do so on those particular occasions. It does not negate the implied claim that Respondent possessed authority to do so and, further, might choose to exercise that discretion in the future by discharging employees who engaged in such activity on a seventh or eighth or some subsequent occasion.

Finally, the Union neither controls, nor is an agent of, Respondent. Accordingly, its statements to employees concerning the lawfulness or unlawfulness of particular threatened action by Respondent constitutes neither a repudiation of Respondent's stated message, in the Terms and Conditions of Employment, nor a lesser form of assurance that Respondent will not illegally discharge employees for engaging in statutorily protected activity. Therefore, I conclude that by announcing to employees that it reserved the right not to discharge employees for engaging in statutorily protected activity enumerated in subsection 23.1 of its Terms and Conditions of Employment, Respondent threatened them in violation of Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

McClatchy Newspapers, Publisher of the Modesto Bee has committed unfair labor practices affecting commerce by unilaterally granting merit wage increases to employees without offering to bargain with Northern California Newspaper Guild, No. 52, The Newspaper Guild, AFL–CIO, CLC about the timing and amounts of the increases, in violation of Section 8(a)(5) and (1) of the Act, and by threatening employees with discharge for engaging in activity protected by Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

REMEDY

Having found that McClatchy Newspapers, Publisher of the Modesto Bee engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and, further, that it be ordered to take certain affirmative action to effectuate the policies of the Act. With respect to the latter, it shall be ordered to bargain with Northern California Newspaper Guild, No. 52, The Newspaper Guild, AFL–CIO, CLC about the timing and amounts of employee merit increases and, further, upon that labor organization's request, to cancel wage increases unilaterally granted to employees. Nothing in the Order, however, should be construed as requiring cancellation of any wage increase without a request from the above-named labor organization. See *McClatchy Newspapers*, supra at 1041.

[Recommended Order omitted from publication.]